

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

May 5, 2003

IN RE:

**PETITION FOR ARBITRATION OF
ITC^DELTACOM COMMUNICATIONS, INC.
WITH BELL SOUTH TELECOMMUNICATIONS, INC.**

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**DOCKET NO.
03-00119**

ORDER APPOINTING MEDIATOR

This matter came before Director Deborah Taylor Tate, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on March 3, 2003 for consideration of the *Petition for Arbitration of ITC^DeltaCom* ("Petition") filed by ITC^DeltaCom Communications, Inc. ("DeltaCom") on February 7, 2003.

Background

Section 251 of the Telecommunications Act of 1996 (the "Act") requires telecommunications carriers to interconnect with the facilities and equipment of other telecommunications carriers. This obligation is usually met through the execution of an interconnection agreement. Incumbent local exchange carriers have the additional statutory obligation to negotiate the terms and conditions of these interconnection agreements in good faith and in accordance with the procedures set forth in Section 252 of the Act.¹ One of the procedures available to parties involved in negotiating an

¹ 47 U.S.C. § 251(c)(1).

interconnection agreement under the Act is a procedure whereby a party may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.²

With its *Petition*, DeltaCom seeks to arbitrate various unresolved issues remaining in their negotiations to interconnect their facilities with the facilities of BellSouth Telecommunications, Inc. ("BellSouth"). In the *Petition*, DeltaCom also requests, *inter alia*, that mediation take place prior to a hearing date being set in this docket.³

Findings

The *Petition* identifies seventy-one issues to be arbitrated.⁴ Although the Act allows for mediation during negotiations, it does not specifically require or prohibit such mediation in advance of the arbitration. In previous arbitrations, the TRA has held mediations prior to the arbitration hearing in an effort to assist the parties in resolving and removing from the arbitration as many issues as possible. Mediation has also been used effectively to highlight issues which have previously been resolved by the Authority in prior arbitration decisions and which, in the absence of new evidence, would likely be resolved in accordance with those previous decisions. Some, if not all, of the issues may be resolved by the parties through a brief mediation process without causing a delay in the proceeding.

During the March 3, 2003 Authority Conference, the panel voted unanimously to move forward with a mediation for the purpose of narrowing the issues in advance of accepting this matter for arbitration. The panel also voted unanimously to appoint the Authority's General Counsel or his designee to act as a mediator in this docket.

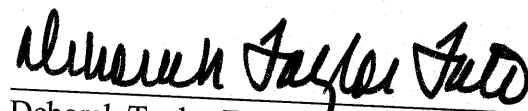
² 47 U.S.C. § 252(a)(2).


³ *Petition*, p. 41 (February 7, 2003).

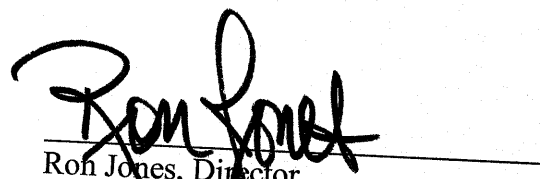
⁴ *Id.*, pp. 4-41.

IT IS THEREFORE ORDERED THAT:

1. The request for mediation articulated in ITC^DeltaCom Communications, Inc.'s *Petition for Arbitration of ITC^DeltaCom* is granted.
2. The General Counsel or his designee is appointed to serve as the Mediator in this docket.


Deborah Taylor Tate, Director


Pat Miller, Director


Ron Jones, Director